

STATE OF NEW YORK

DIVISION OF TAX APPEALS

In the Matter of the Petition	:	
	:	
of	:	
	:	
SANDRA STONE	:	DETERMINATION
	:	DTA NO. 818857
for Redetermination of Deficiencies or for Refund of New	:	
York State Personal Income Tax under Article 22 of the	:	
Tax Law for the Period January 1, 1997 through March 31,	:	
2000.	:	

Petitioner, Sandra Stone, c/o Howard Koff, 600 Broadway, Albany, New York 12207, filed a petition for redetermination of deficiencies or for refund of New York State personal income tax under Article 22 of the Tax Law for the period January 1, 1997 through March 31, 2000.

A small claims hearing was held before James Hoefer, Presiding Officer, at the offices of the Division of Tax Appeals, 500 Federal Street, Troy, New York on September 24, 2002 at 1:15 P.M. Petitioner appeared by Howard Koff, Esq. The Division of Taxation appeared by Barbara G. Billet, Esq. (Francis A. Leo).

Since neither party herein elected to file a post-hearing brief, the three-month period for the issuance of this determination commenced as of the date the hearing was held.

ISSUES

I. Whether the Division of Taxation properly determined that petitioner was the sole proprietor of Advantage Auto and, as such, personally liable for payment of the income taxes withheld from employee wages which had not been paid over to the Division.

II. Whether petitioner is liable for penalties imposed pursuant to Tax Law § 685(a)(1), (b), (h) and (i) for failure to file timely withholding tax returns, negligence, failure to file a statement of payment to another individual and failure, with fraudulent intent, to pay any tax or file a return or supply any information, respectively.

FINDINGS OF FACT

1. Petitioner herein, Sandra Stone, was, during the period at issue in this proceeding, married to one Ronald Stone. Petitioner and Ronald Stone had three children, born in 1980, 1982 and 1985. Ronald Stone died on January 11, 2001.

2. Sometime in 1984 or 1985, Ronald Stone began employment with a large national insurance company. Said employment ended in 1989 when Mr. Stone was arrested and pled guilty to embezzling approximately \$100,000.00 from his employer. Mr. Stone was sentenced to two and one-third to seven years in prison. He was released from incarceration sometime in 1992, at which time he returned to the marital residence.

3. After his release from prison Mr. Stone had difficulty finding employment because of the felony conviction, and for several years he bounced between entry-level jobs or he did not work at all. Petitioner has been continuously employed in a full-time clerical position since 1982 by the New York State Department of Social Services.

4. In mid 1994, Ronald Stone wished to purchase Advantage Auto (“Advantage”), an automobile repair and towing business located at 68 Fuller Road, Albany, New York. Mr. Stone was unable to purchase and register Advantage due to his felony conviction and he therefore asked petitioner if she would sign the purchase agreement and register Advantage in her name. Petitioner initially rejected his proposal; however, her husband applied constant pressure until, against her better judgement, she agreed.

5. On August 3, 1994, petitioner filed a Business Certificate with the Office of Albany County Clerk certifying that she was conducting business under the name of Advantage Auto at 68 Fuller Road, Albany, New York. Petitioner also filed for and received from the Division of Taxation ("Division") a Certificate of Registration as a Sales Tax Vendor indicating that she was the sole proprietor of Advantage.

6. Although petitioner was the listed as the owner and sole proprietor of Advantage there is no dispute herein that her husband, Ronald Stone, actually ran the business. In fact, Ronald Stone financed the purchase of Advantage and made all financial and operational decisions regarding the business. Also, all funds generated from Advantage were controlled solely by Mr. Stone.

7. Shortly after it began operations Advantage fell behind in both its Federal and New York State tax obligations. Substantial assessments for withholding taxes and sales and use taxes were issued by both the Internal Revenue Service ("IRS") and the Division. In the normal course of operations the Division became aware of Federal tax liens filed by the IRS against Advantage in the Albany County Clerk's Office for past due social security and Federal withholding taxes. The Division contacted petitioner on numerous occasions attempting to schedule an audit of Advantage's New York State withholding tax records; however said attempts to meet with petitioner or her husband to review Advantage's books and records proved fruitless.

8. Since the Division was unable to review any of Advantage's books and records it estimated that its New York State withholding tax liability for the period January 1, 1997 through March 31, 2000 was equal to 25% of the Federal withholding tax as determined in the Federal tax liens filed in the Albany County Clerk's Office. On February 26, 2001, the Division

issued three notices of deficiency to petitioner, one for each of the calendar years 1997, 1998 and 1999. A fourth Notice of Deficiency was issued to petitioner on March 5, 2001 for the period January 1, 2000 through March 31, 2000. The following table sets forth the amount of tax, interest and penalties asserted due for the period at issue herein:

PERIOD	TAX	INTEREST	PENALTIES	TOTAL
1997	\$1,049.00	\$325.67	\$1,924.28	\$3,298.95
1998	\$2,991.00	\$661.39	\$2,628.00	\$6,280.39
1999	\$1,398.00	\$183.89	\$1,511.35	\$3,093.24
3-31-00	\$1,150.00	\$88.35	\$639.17	\$1,877.52

Penalties were asserted due pursuant to Tax Law § 685(a)(1) for failure to timely file withholding tax returns, section 685(b) for negligence, section 685(h) for failure to file a statement of payment to another individual and section 685(i) for failure, with fraudulent intent, to pay any tax or file a return or supply any information.

9. In this proceeding petitioner does not contest the amount of tax estimated to be due in each of the four notices of deficiency. Petitioner does contest that she should be held personally liable for payment of the amounts asserted due in the notices of deficiency given the fact that she had no involvement in the business and that her now deceased husband had full and total control over every aspect of Advantage's operational and financial affairs. Petitioner alternatively argues that, given the facts of this case, all penalties should be waived.

10. Both petitioner and Mr. Stone's sister testified at the hearing held herein and from their testimony it can be seen that Ronald Stone was a secretive and manipulative individual who had a way of pressuring friends and family members until he got his way. Mr. Stone was portrayed as an alcoholic, heavy gambler and one given to constant emotional badgering, threats and physical abuse.

11. Petitioner was not privy to any of the operational or financial affairs of Advantage. If petitioner questioned her husband about Advantage's operations she was told that it was none of her business and that he would take care of it.

12. Petitioner did not receive any of the proceeds or profits generated from her husband's operation of Advantage and she did not receive any economic benefit from Advantage since her husband did not contribute to household expenses. During their marriage, petitioner and her husband did not own a house, drive expensive cars or take vacations. When Mr. Stone was arrested in 1989 for embezzling some \$100,000.00 from his employer, petitioner was completely unaware of his activities, and moreover, she never saw, controlled or in any way benefitted from the misappropriation of said funds.

13. Petitioner did not file joint income tax returns with her husband, instead electing to file as head of household claiming the three children as her dependents. Her returns did not reflect any income or loss from Advantage's operations.

SUMMARY OF PETITIONER'S POSITION

14. Petitioner maintains that she signed the business certificate and sales tax registration for Advantage under extreme duress from her husband and that these were not volitional acts on her part. Petitioner testified that once her husband had decided to acquire Advantage and asked her to sign the necessary papers one of three things was going to happen: (a) she would sign the documents; (b) she would be pressured until she had a nervous breakdown, or (c) he would kill her. Other than to sign the business certificate and the sales tax registration petitioner asserts that she had no contact or control over Advantage's affairs and received no economic benefit from Advantage. Petitioner argues that, under the unique facts of this case, it would be unfair and unreasonable to hold her personally responsible for the tax, interest and penalties due from Advantage.

15. Alternatively, petitioner asserts that there is reasonable cause to waive the penalties asserted in each of the four notices of deficiency since it was her deceased husband's acts, and not hers, which resulted in Advantage's failure to remit the New York State taxes withheld from employee wages.

CONCLUSIONS OF LAW

A. In the instant matter there is no dispute that a sole proprietor is personally liable for payment of taxes withheld from employee wages and not remitted to the Division. There is also no dispute that petitioner was, on paper, the named sole proprietor of Advantage. The question to be addressed herein is whether petitioner's signatures on the business certificate and sales tax registration were volitional acts and that she was in fact the sole proprietor of Advantage.

B. After careful consideration of the entire record, I conclude that petitioner signed the business certificate and sales tax registration as the result of extreme pressure brought on her by her now deceased husband and that these were not volitional acts on her part. Petitioner's only connection with Advantage was her signature on these two documents and it is clear that she never participated in Advantage's business or financial affairs or received any economic benefit from Advantage. The record reflects that petitioner's husband did not permit and, in fact, prevented her from participating in Advantage's business and financial matters. Under these facts it cannot be found that petitioner was the sole proprietor of Advantage. Furthermore, it would be unfair and inequitable (Tax Law § 2012), given the circumstances present in this matter, to hold petitioner liable for the taxes at issue in this proceeding.

C. The petition of Sandra Stone is granted and the three notices of deficiency dated February 26, 2001 and the one Notice of Deficiency March 5, 2001 are hereby canceled in full.

DATED: Troy, New York
December 19, 2002

/s/ James Hoefer
PRESIDING OFFICER